



DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Docket No.: FAA-2020-0809]

14 CFR Parts 61, 63, 65, 67, and 107

Amended Prompt Settlement Policy for Legal Enforcement Actions Involving Medical Certificate-Related Fraud, Intentional Falsification, Reproduction, or Alteration

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Notification of Enforcement Policy.

SUMMARY: The FAA is amending its policy for the prompt settlement of legal enforcement actions against individuals who the FAA has found violated regulations prohibiting any fraudulent or intentionally false statement on an application for a medical certificate or other document used to show compliance with any requirement for a medical certificate; reproduction of a medical certificate for fraudulent purposes; or alteration of a medical certificate. Revocation of all airman, ground instructor, and medical certificates is the appropriate sanction for such violations, and FAA regulations prohibit application for a new airman or ground instructor certificate for one year following the effective date of the order of revocation unless the order provides otherwise. The previous version of this policy allowed eligible individuals the opportunity to promptly receive an emergency order of revocation and, thereby, apply for a new airman or ground instructor certificate sooner than in the absence of that policy; however, that policy required a one-year wait period from the effective date of the order before an individual could apply for a new certificate. This amended policy will still ensure that eligible individuals promptly receive an emergency order of revocation, but the order will allow them the opportunity to apply for a new airman or ground instructor certificate after nine months from the effective date of the order.

DATES: This notification of enforcement policy is effective January 31, 2022.

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SUPPLEMENTARY INFORMATION:

Background

On September 30, 2020, the FAA's prompt settlement policy (2020 PSP) relating to violations of 14 CFR 67.403(a)(1) through (4)¹ went into effect.² Under the 2020 PSP, an individual subject to legal enforcement action based on a violation 14 CFR 67.403 had the opportunity to enter into a settlement agreement providing for the prompt issuance of an emergency order revoking the individual's airman, ground instructor, and medical certificates. The prompt issuance of the order afforded eligible individuals the opportunity to apply for a new airman certificate under 14 CFR parts 61, 63, and 65, or a new ground instructor certificate under 14 CFR part 61, sooner than in the absence of such a policy.³

The 2020 PSP noted that the revocation of all airman, ground instructor, and medical certificates is the appropriate sanction for violations of 14 CFR 67.403(a)(1) through (4).⁴ It also explained that the period between the discovery of an apparent violation of 14 CFR 67.403(a)(1) through (4) and, if appropriate, the issuance of an order revoking airman, ground instructor, and

¹ Under 14 CFR 67.403(a)(1) through (4), a person is prohibited from making or causing to be made: (1) a fraudulent or intentionally false statement on any application for a medical certificate or on a request for any Authorization for Special Issuance of a Medical Certificate (Authorization) or Statement of Demonstrated Ability (SODA); (2) a fraudulent or intentionally false entry in any logbook, record, or report that is kept, made, or used to show compliance with any requirement for any medical certificate or for any Authorization or SODA; (3) a reproduction, for fraudulent purposes, of any medical certificate; or (4) an alteration of any medical certificate.

² Settlement Policy for Legal Enforcement Actions Involving Medical Certificate-Related Fraud, Intentional Falsification, Reproduction, or Alteration, 85 FR 60057 (Sept. 24, 2020).

³ Individuals were eligible for the 2020 PSP when there was no question about their qualification to hold a part 61, 63, or 65 certificate other than that presented by the 14 CFR 67.403(a)(1) through (4) violation and when they had no previous violations of 14 CFR 67.403(a)(1) through (4).

⁴ Under 14 CFR 67.403(b)(1) and (2), a violation of 14 CFR 67.403(a)(1) through (4) is a basis for suspending or revoking all airman, ground instructor, and medical certificates and ratings held by the violator and withdrawing all Authorizations or SODA's held by the violator. *See also* FAA Order 2150.3C, chap. 9, para. 8 (certificate revocation is appropriate for a violation of 14 CFR 67.403(a)(1) through (4) since such a violation demonstrates a lack of qualification to hold a certificate).

medical certificates can be lengthy. In this regard, the 2020 PSP stated that the timing between the FAA's discovery of an apparent violation of 14 CFR 67.403(a)(1) through (4) and the issuance of an order of revocation is affected by the time required to complete a full investigation and multi-tiered case review. In addition, the 2020 PSP noted that 14 CFR parts 61, 63, and 65 prohibit individuals whose airman and ground instructor certificates have been revoked from applying for new airman and ground instructor certificates for one year following the effective date of an order of revocation unless the order provides otherwise.⁵ The 2020 PSP provided that individuals would still be subject to the one-year post-revocation bar for applications for new airman or ground instructor certificates but would have the opportunity to apply for such certificates sooner than without the policy because much of the investigation and case review process would be abbreviated or eliminated.

The amendment to the 2020 PSP announced in this document will afford eligible individuals who the FAA has found violated 14 CFR 67.403(a)(1) through (4) the opportunity to promptly receive an emergency order revoking any airman, ground instructor, and medical certificate they hold and to apply for a new 14 CFR part 61, 63, or 65 certificate after nine months from the effective date of the order.⁶ Not only will this amendment reduce the one-year post-revocation bar related to the application for new 14 CFR part 61, 63, or 65 certificates to nine months, it will continue the 2020 PSP's features of promptness in issuing emergency orders and predictability associated with settlement agreements.

Like the 2020 PSP, this amended policy will also apply when any controlled substance conviction or motor vehicle action that is the basis for a violation of 14 CFR 61.15(a), (d), or (e)

⁵ See 14 CFR 61.13(d)(2), 63.11(d), and 65.11(d)(1) and (2). The one-year application restriction applicable to revoked 14 CFR parts 61, 63, and 65 certificates does not apply to certificates issued under 14 CFR part 67 or 107.

⁶ If a certificate revoked by the order was issued under: (1) 14 CFR part 61, the waiting period will apply to all certificates issued under 14 CFR part 61; (2) 14 CFR part 63, the waiting period will apply to the kind of part 63 certificate revoked; (3) 14 CFR part 65, and that certificate was a mechanic or repairman certificate, the waiting period will apply to both kinds certificates; or (4) 14 CFR part 65, and that certificate was an air traffic control tower operator, aircraft dispatcher, or parachute rigger certificate, the waiting period will apply to the same kind of certificate revoked.

also forms the basis for an intentional falsification violation under 14 CFR 67.403(a)(1).⁷ For example, the policy will apply to (1) violations of 14 CFR 67.403(a)(1) and 14 CFR 61.15(e) when the violations were related to the same driving under the influence conviction; (2) violations of 14 CFR 67.403(a)(1) and 14 CFR 61.15(a) when the violations were related to the same controlled substance conviction; and (3) violations of 14 CFR 67.403(a)(1) and 14 CFR 61.15(d) and (e) when the violations were related to the same motor vehicle action or actions.

Statement of Policy

Under this amended prompt settlement policy, the FAA will send an eligible individual who is the subject of an investigation for an apparent violation of 14 CFR 67.403(a)(1) through (4) a letter of investigation (LOI) that will offer the individual the opportunity to enter into a settlement agreement. The settlement agreement will provide for the prompt issuance of an emergency order (1) revoking all airman, ground instructor, and medical certificates the individual holds; (2) requiring the immediate surrender of the affected certificates; and (3) allowing application for a new airman or ground instructor after nine months from the effective date of the order. The settlement agreement will require the individual to waive any right to appeal from the order. Both certificate holders who are reasonably able to exercise the privileges of any airman or ground instructor certificate they hold or certificate holders who are not reasonably able to exercise such privileges may enter into a settlement agreement under this amended policy.⁸

This amended policy will apply when any controlled substance conviction or motor vehicle action that was the basis for a violation of 14 CFR 61.15(a), (d), or (e) also forms the

⁷ Under 14 CFR 61.15(a), a conviction for the violation of any Federal or State statute relating to the growing, processing, manufacture, sale, disposition, possession, transportation, or importation of narcotic drugs, marijuana, or depressant or stimulant drugs or substances is grounds for suspension or revocation of any certificate, rating, or authorization issued under 14 CFR part 61. Under 14 CFR 61.15(d), except for a motor vehicle action that results from the same incident or arises out of the same factual circumstances, a motor vehicle action occurring within three years of a previous motor vehicle action is grounds for suspension or revocation of any certificate, rating, or authorization issued under 14 CFR part 61. Under 14 CFR 61.15(e), each person holding a certificate issued under this part shall provide a written report of each motor vehicle action to the FAA not later than 60 days after the motor vehicle action.

⁸ The FAA generally takes emergency certificate action when (i) the certificate holder lacks qualifications, there is a reasonable basis to question whether the certificate holder is qualified to hold the certificate, or the certificate holder

basis for an intentional falsification violation under 14 CFR 67.403(a)(1). Under this amended policy, the FAA will include in the LOI notification to individuals that they may contact the applicable program office within ten days of receipt of the LOI to request consideration under the prompt settlement policy.

Following an individual's request to be considered under this amended policy, the FAA will determine the individual's eligibility for the policy. Individuals will be eligible for the policy if there is no basis other than that presented by the 14 CFR 67.403(a)(1) through (4) (or 14 CFR 61.15, if applicable) violations to question their qualification to hold a part 61, 63, or 65 certificate and the FAA has found they have not previously violated 14 CFR 67.403(a)(1) through (4).

If the FAA deems an individual is eligible for this amended policy, the Chief Counsel, or Chief Counsel's designee, will provide the individual, or his or her legal representative, a formal agreement that sets forth the conditions for prompt settlement. The terms of this settlement agreement will normally include the following provisions.

- (1) The parties must execute the settlement agreement within ten days after the FAA sends the agreement to the individual.
- (2) The FAA will issue an emergency order revoking all airman, ground instructor, and unexpired medical certificates the individual holds immediately upon receiving the fully executed settlement agreement.
- (3) The emergency order of revocation will (i) require the immediate surrender of all airman, ground instructor, and unexpired medical certificates the individual holds to agency counsel; (ii) notify the individual that the failure to immediately surrender

does not comply with statutory or regulatory requirements to cooperate with the FAA; and (ii) the certificate holder is reasonably able to exercise the privileges of the certificate. *See* Order 2150.3C, chap. 7, para. 4.a.(2). The FAA generally issues notices proposing certificate action (rather than emergency certificate actions) when only the first criterion is met, *e.g.*, the certificate holder lacks qualifications. For example, the FAA generally issues a notice proposing certificate action involving the revocation of a pilot certificate when the certificate holder only holds a pilot certificate and is required to but does not hold a valid medical certificate. For the limited purposes of this amended policy, individuals who are not reasonably able to exercise the privileges of any airman certificate they hold may enter into a settlement agreement for the issuance of an emergency order of revocation as described herein.

these certificates could subject the individual to further legal enforcement action, including a civil penalty; and (iii) inform the individual that the FAA will not accept an application for a new airman certificate under 14 CFR part 61, 63, or 65, or ground instructor certificate under 14 CFR part 61, for a period of nine months from the effective date of the order. *See* fn.6 for details regarding certificate application waiting periods.

- (4) The individual will waive all appeal rights from the emergency order of revocation.
- (5) The individual acknowledges that this agreement only concerns this enforcement action brought by the FAA and does not affect any action that might be brought by State or other Federal agencies (whether civil or criminal), and that this agreement does not prevent the FAA from providing information about this matter to State or other Federal agencies.
- (6) The parties will agree to bear their own costs and attorney fees, if any, in connection with the matter.
- (7) The individual will agree to not initiate any litigation before any court, tribunal, or administrative entity concerning any costs, damages, or attorney fees, including applications under the Equal Access to Justice Act, incurred as a result of the above-referenced matter.
- (8) The individual will agree to waive any and all causes of action against the FAA and its current and/or former officials and employees relating to the above-referenced matter.

This amended policy will allow eligible individuals to more quickly apply for new 14 CFR parts 61, 63, and 65 certificates following a violation of 14 CFR 67.403(a)(1) through (4). It also reduces uncertainty about the date of issuance of emergency orders of revocation

related to such violations, eliminates the unpredictability of litigation, and promotes better resource allocation.

Issued in Washington, DC on January 19, 2022.

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[FR Doc. 2022-01308 Filed: 1/24/2022 8:45 am; Publication Date: 1/25/2022]